



HM Revenue  
& Customs

J. Rice

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Dear J. Rice

### **Freedom of Information Act 2000 (FOIA)**

Thank you for your request, which was clarified on 15 February, for the following information:

'1. On 10 November, you asked for clarification regarding the term 'limited companies' in my request, and on 12 November I confirmed that this was a reference to the contracting of an individual through their own PSC. As you have confirmed no limited company (PSC) contractors have been directly engaged by HMRC and/or RCDTS, please can you tell me, during the period 2010 to present, whether HMRC and/or RCDTS have directly engaged any limited company (i.e. not a PSC) which was making use of an Employee Benefit Trust (EBT)?'

'Thank you for your communication regarding my FOI request (FOI2020/03257) asking for clarification on the first question - "It is unclear from your first question if you are referring to the direct engagement of a limited company for the provision of contingent labour or referring to contracts for the provision of any type of service or goods'.

'I can confirm that this first question refers to the direct contractual engagement of limited companies (NOT PSCs) providing any type of service or goods - which, in this instance, can also include contingent labour. Hopefully questions two and three are self-explanatory.'

'2. You have informed me that, during the period 2010 to present, no contingent labour workers or PSCs have been directly engaged by HMRC and/or RCDTS. This would presumably imply that all contractors working on HMRC and/or RCDTS' own systems have been engaged indirectly, following security clearance and other vetting checks (prima facie, on your behalf) by the agencies which are part of the Crown Commercial Services framework, or through a professional service provider. As HMRC and/or RCDTS will obviously have legal contracts in place with these agencies and professional service providers, please can you provide the numbers of contractors which they have supplied to you between 2010 and 2020, preferably with a summary total and a breakdown per year?

3. Based on the formal contracts in place between HMRC/RCDTS and the agencies who form part of the CCS framework, and also the contracts HMRC/RCDTS has with professional service providers, you affirm that any contractor who is engaged to work on HMRC/RCDTS sites and systems will have a contract in place with that agency or service provider, through whom each individual is, to quote from your reply, 'directly managed'. Please can you therefore confirm that, in all these instances, the definition of 'employer' is

either the agency or the service provider, and not (apparently) HMRC/RCDTS as the 'client'?

Compared to the rest of government, HMRC has adopted a strengthened approach to tax compliance for its own procurements, reserving the right to exclude a supplier where HMRC can demonstrate a breach of tax or social security obligations by the supplier, including in instances where no binding judicial or administrative decision has been made. HMRC may exclude that supplier from the HMRC may exclude that supplier from the procurement until the supplier settles the tax due, or terminate its contract.

This approach is used for all procurements by HMRC, including contingent labour agencies and fully contracted-out services.

Furthermore, in assessing tax compliance, HMRC looks beyond the entity that is bidding and may exclude a potential supplier if a member of the same group of companies (including overseas entities in the group) which acts as the same economic unit is non-compliant or, in certain circumstances, where the controlling persons of the potential supplier, are non-compliant. In adopting this approach, HMRC relies on the discretionary exclusion criteria detailed in Public Contracts Regulations 2015 (PCR 2015, Reg 57).

Your first question seeks the number of departmental suppliers who have utilised an employee benefit trust (EBT). I can advise that this information is not held by the department. It may help if I explain that while employee benefit trusts (EBT's) may be used to facilitate tax avoidance schemes, these types of trusts are also used for legitimate purposes including providing benefits to a wide group of employees. On this basis, HMRC has no need to record whether each of our suppliers has an EBT.

In response to your second question, I can advise that workforce numbers, both payroll and non-payroll (contingent labour) information is available on [GOV.UK](https://gov.uk). HMRC do not hold records dating back to 2010 of those workers engaged as a professional service provider and as such, we are unable to provide the number of contractors engaged on this basis between 2010 and 2020.

Regarding your third question, HMRC and RCDTS do engage workers via agencies and/or service providers and have contracts in place with those suppliers. HMRC does not have contracts directly with the workers provided by those suppliers and is not the employer of the workers.

The suppliers will have a contractual relationship either with the workers or another entity that provides the workers. Potentially the contractual relationship between a worker and the supplier could be one of employer and employee, but that is not necessarily the case as other arrangements are also possible. We are unable to confirm the nature of the relationship that exists between the suppliers and the workers themselves because HMRC is not a party to those contracts.

If you are not satisfied with this reply you may request a review within two months by emailing [foi.review@hmrc.gov.uk](mailto:foi.review@hmrc.gov.uk), or by writing to the address at the top right-hand side of this letter.

If you are not content with the outcome of an internal review you can [complain to the Information Commissioner's Office](#).

Yours sincerely,

HM Revenue and Customs